



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,085	02/20/2004	Kenneth David Harris JR.	Brook.1019	6251

7590 07/25/2005

Gunnar G. Leinberg
NIXON PEABODY LLP
Clinton Square
P.O. Box 31051
Rocchester, NY 14603-1051

EXAMINER

MAYO, TARA L

ART UNIT	PAPER NUMBER
----------	--------------

3671

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/783,085

Applicant(s)

HARRIS ET AL.

Examiner

Tara L. Mayo

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 16 May 2005. These drawings are acceptable.

Specification

2. The prior objection to the Abstract has been overcome by the response filed 16 May 2005.

Response to Amendment

3. The declaration under 37 CFR 1.132 filed 16 May 2005 is sufficient to overcome the rejection of claims 1 through 4, 6 through 13, 16 through 19, 21 through 28 and 31 based upon Schwartz et al. (U.S. Patent No. 6,814,709 B2) under 35 USC §102(e) and the rejection of claims 5, 14, 15, 20, 29 and 30 based upon Schwartz et al. (U.S. Patent No. 6,814,709 B2) under 35 USC §103(a).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

Art Unit: 3671

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1 through 4, 6, 8 through 10, 12, 16 through 19, 21, 23 through 25, 27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassini (U.S. Patent No. 3,273,174) in view of Tomlinson (U.S. Patent No. 5,895,365 A).

Cassini '174, as seen in Figures 1 through 8, shows a bed cushion for supporting a person in a sitting position comprising:

with regard to claims 1, 16 and 31,

a backrest with two side edges (2); and

two armrests (7, 8) rotatably coupled (via snaps; col. 2, lines 25 through 45) to the backrest, wherein the two armrests can rotate from a sitting position to folded position along the two side edges of the backrest;

with regard to claims 2 and 17,

wherein the two armrests are perpendicular to the backrest in the sitting position;

with regard to claims 3 and 18,

wherein the two armrests rotate from zero to one hundred and eighty degrees from the backrest; and

with regard to claims 6 and 21,

wherein the backrest and two armrests form nearly a rectangular top profile in the folded position.

Cassini '174 teaches all of the features of the claimed invention with the exception(s) of:
with regard to claims 1, 16 and 31,

one or more massaging units within the backrest;

with regard to claims 4 and 19,

the sitting position being formed by rotating the two armrests from about forty-five to about one hundred and thirty -five degrees from the backrest;

with regard to claims 8 and 23,

the one or more massaging units being pulsating transducers;

with regard to claims 9 and 24,

a control panel coupled by electrical communication to the one or more massaging units;

with regard to claims 10 and 25,

the control panel being located in one of the two armrests; and

with regard to claims 12 and 27,

a power supply coupled by electrical communication to a control panel.

Tomlinson '365, as seen in Figures 1 and 3, shows a massaging bed cushion comprising a backrest (12) and right and left armrests (24, 28) rotatably coupled (via elements 38 and 40) to the backrest, and further comprising one or more massaging units (20) within the backrest in the form of pulsating transducers (col. 4, lines 14 through 15), the massaging units being in electrical

Art Unit: 3671

communication with a control panel (32) located in one of the armrests, and further comprising a power supply in electrical communication with the control panel (col. 4, lines 15 through 17 and 28 through 30).

With regard to claims 1, 8 through 10, 12, 16, 23 through 25, 27 and 31, it would have been obvious to one having ordinary skill in the art body supports at the time the invention was made to modify the device shown by Cassini '174 such that it would include the vibratory system disclosed by Tomlinson '365. The motivation would have been to enhance the comfort of a user by imparting massaging action.

With regard to claims 4 and 19, Cassini '174 shows the armrest in a sitting position at about ninety degrees from the backrest; therefore, the claimed limitation of rotating the armrest from about forty-five degrees to about one hundred and thirty-five degrees is anticipated the prior art reference.

7. Claims 5, 15, 20 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassini (U.S. Patent No. 3,273,174) in view of Herpel et al. (U.S. Patent No. 3,542,427).

Cassini '174 teaches all of the features of the claimed invention with the exception(s) of: with regard to claims 5 and 20,

one or more latches to prevent the armrests from rotating about the backrest beyond the sitting position; and

with regard to claims 15 and 30,

Art Unit: 3671

the two armrests being coupled to the backrest by an axle that runs through a bottom portion of the backrest.

Herpel et al. '427, as seen in Figures 1 and 2, disclose a vehicle seat assembly with movable right and left armrests (26, 28) for accommodating desired passenger access and egress, wherein the armrests are coupled to the back portion (14) by an axle (56) running through a bottom portion of the backrest, and further comprising one or more latches (formed by the combination of elements 48 and 68) that prevent the armrests from rotating about the back rest beyond a sitting position.

With regard to claims 5, 15, 20 and 30, it would have been obvious to one having ordinary skill in the art of body supports at the time the invention was made to modify the device shown by Cassini '174 such that it would further include an axle and one or more latches as taught by Herpel et al. '427. The motivation would have been to impart rotation to the armrests relative to the backrest in a manner not requiring separation of the armrests from the backrest.

8. Claims 1, 7, 11 through 13, 16, 22, 26 through 28 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassini (U.S. Patent No. 3,273,174) in view of Sleichter, III et al. (U.S. Patent No. 6,682,494 B1).

Cassini '174, as seen in Figures 1 through 8, shows a bed cushion for supporting a person in a sitting position comprising:

with regard to claims 1, 16 and 31,

Art Unit: 3671

a backrest with two side edges (2); and
two armrests (7, 8) rotatably coupled (via snaps; col. 2, lines 25 through 45) to the backrest, wherein the two armrests can rotate from a sitting position to folded position along the two side edges of the backrest.

Cassini '174 fail to teach:
with regard to claims 1, 16 and 31,
one or more massaging units within the backrest;
with regard to claims 7 and 22,
the one or more massaging units being massaging motors;
with regard to claims 11 and 26,
a control panel and one or more heating sources in the backrest and electrically coupled to and controlled by the control panel;
with regard to claims 12 and 27,
a power supply coupled by electrical communication to a control panel; and
with regard to claims 13 and 28,
the power supply being a battery.

Sleichter, III et al. '494, as seen in Figure 1, shows a seat (15) including a seat cushion (14A) and a separate backrest (14B), the backrest comprising multiple massaging units (12) in the form of pulsating transducers (Claim 31) or motors (Claim 1), and further including a control

Art Unit: 3671

panel (36), one or more heating sources (16), and a power supply in the form of a battery (col. 8, lines 11 through 15).

With regard to claims 1, 7, 11 through 13, 16, 22, 26 through 28 and 31, it would have been obvious to one having ordinary skill in the art of body supports at the time the invention was made to modify the device shown by Cassini '174 such that it would include the vibratory and heating system disclosed by Sleichter, III et al. '494. The motivation would have been to enhance the comfort of the user.

9. Claims 14 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassini (U.S. Patent No. 3,273,174) in view of Tomlinson (U.S. Patent No. 5,895,365 A) as applied to claim 1 above, and further in view of Swezey et al. (U.S. Patent No. 5,423,098).

Cassini '174 further teaches:

with regard to claim 14,

the backrest comprising a rectangular cushion and a fabric (col. 1, lines 60 through 69; and col. 2, lines 18 through 22).

The combination of Cassini '174 and Tomlinson '365 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claims 14 and 29,

the backrest comprising a rectangular frame.

Art Unit: 3671

Swezey et al. '098, as seen in Figures 1 through 4, show a bed lounge (10) including a backrest (20), the backrest comprising a rectangular frame (22A) covered by a rectangular cushion (Claim 1, line 8) and a fabric (12; Claim 1, lines 9 through 10).

With regard to claims 14 and 29, it would have been obvious to one having ordinary skill in the art of supports at the time the invention was made to modify the device shown by the combination of Cassini '174 and Tomlinson '365 such that it would further include a frame as taught by Swezey et al. '098 to provide strength to device while keeping it relatively lightweight.

Response to Arguments

10. Applicant's arguments filed 16 May 2005 have been fully considered but they are not persuasive.

In response to Applicant's statement that Cassini '174 fails to disclose or suggest armrests rotatably coupled to the backrest, the Examiner contends the position of the armrests can be rotated from a sitting position to a folded position along the two side edges of the backrest by unsnapping the loops and then re-snapping them in a different position to hold the armrests along the side edges of the backrest.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

Art Unit: 3671

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



20 July 2005

M. Petravick
MEREDITH PETRAVICK
PRIMARY EXAMINER
GAU 3671